



**US Army Corps  
of Engineers**  
Huntington District

# Public Notice

In reply refer to:

**Public Notice No.** 200300788

Issuance Date:

December 24, 2003

**Stream:**

Expiration Date:

~~UN Trib Touby Run~~

~~January 24, 2004~~

Address comments to:

US Army Corps of Engineers, Huntington District  
602 Eighth Street  
**ATTN: CELRHE**  
Huntington, West Virginia 25701-2070

**TO WHOM IT MAY CONCERN:** The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the Ohio Environmental Protection Agency to act on Section 401 Water Quality Certification for the following application.

**APPLICANT:** Wal-Mart Stores, Inc.  
Ms. Kim Lane  
2001 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716

**LOCATION:** The project is located in wetlands adjacent to an unnamed tributary of Touby Run along Lexington-Springmill Road in Ontario, Richland County, Ohio.

**DESCRIPTION OF PROPOSED WORK:** The applicant proposes to place fill material into waters of the United States in association with the construction of a Wal-Mart store. According to the applicant, the purpose of the project is to construct a store approximately twice the size of the existing Wal-Mart on-site and to construct associated roads and parking lots.

The proposal would include work in wetlands adjacent to an unnamed tributary of Touby Run. A total of 4.41 acres of jurisdictional wetlands are present within the proposed project limits of the 39.6-acre site. Of this total, 4.37 acres are scrub/shrub and forested wetlands, while 0.04-acre has been identified as an emergent wetland swale. The applicant proposes to place 3,833 cubic yards of fill material into 1.63 acres of jurisdictional wetlands in association with the construction of a 205,000 square foot Wal-Mart Store. This store would replace the existing 116,400 square foot building on-site, which would be demolished following completion of the proposed store's construction. The area currently occupied by the existing store would be used for the construction of a portion of the proposed 1,063 parking spaces.

The remaining 2.74 acres of wetlands on-site would be protected and preserved by a minimum 20' wide vegetated buffer, where practicable. The applicant has stated these wetlands would be preserved in perpetuity in their natural state by a conservation easement to be held by the Goreman Nature Center. To mitigate off-site for wetland impacts associated with the project, the applicant proposes to restore and create 1.63 acres of forested wetlands within an existing agricultural area located on a 120-acre parcel along Franklin Church Road in Weller Township, Richland County, Ohio. The proposed impact area and mitigation area are both located in the Black Fork Mohican River watershed. This 120-acre tract of land, including the mitigation site, approximately 21 acres of existing wetlands, 42 acres of farmland and 57 acres of forested/non-agricultural uplands, would be protected in perpetuity in its natural state by a conservation

easeement to be held by the Goreman Nature Center. The applicant indicates the currently farmed portions of this tract would be left fallow and allowed to convert to either wetlands or forested areas in the future.

A total of 1.63 acres of jurisdictional wetlands would be filled as a result of the proposal. The project does not require access to or siting within the wetlands to fulfill its basic purpose and is considered a non-water dependent activity. The Section 404(b)(1) Guidelines state for non-water dependent activities, practicable alternatives that do not involve wetlands are presumed to be available unless clearly demonstrated otherwise. The applicant is required to provide an alternative analysis that must overcome the presumption prior to receiving authorization for the placement of fill material. The required alternative analysis has not been received in this office.

Plans of the proposed work are attached to this notice.

A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain that certification from the Ohio Environmental Protection Agency.

**HISTORIC AND CULTURAL RESOURCES:** The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register in the area proposed to be impacted by the project. A copy of this public notice will be sent to the State Historic Preservation Office (SHPO) for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

**THREATENED AND ENDANGERED SPECIES:** This project is located within the known or historic range of the following endangered and threatened species: Indiana Bat. The applicant has coordinated this project with the US Fish and Wildlife Service prior to our receipt of a complete application for this project. The USFWS stated because the proposed project is located approximately five miles from a known Indiana Bat capture and because potential roost sites are located on-site, Indiana bats likely use the site as summer roost habitat. The USFWS recommended an assessment value of the habitat for bats be conducted to document all roost trees within the project boundaries. A survey of potential Indiana Bat roost sites was conducted by the applicant and submitted to the USFWS for review. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have whether any listed or proposed to be listed endangered or threatened species may be present in the area that would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

Any person who has an interest, which may be adversely affected by the issuance of a permit, may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The


benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments.

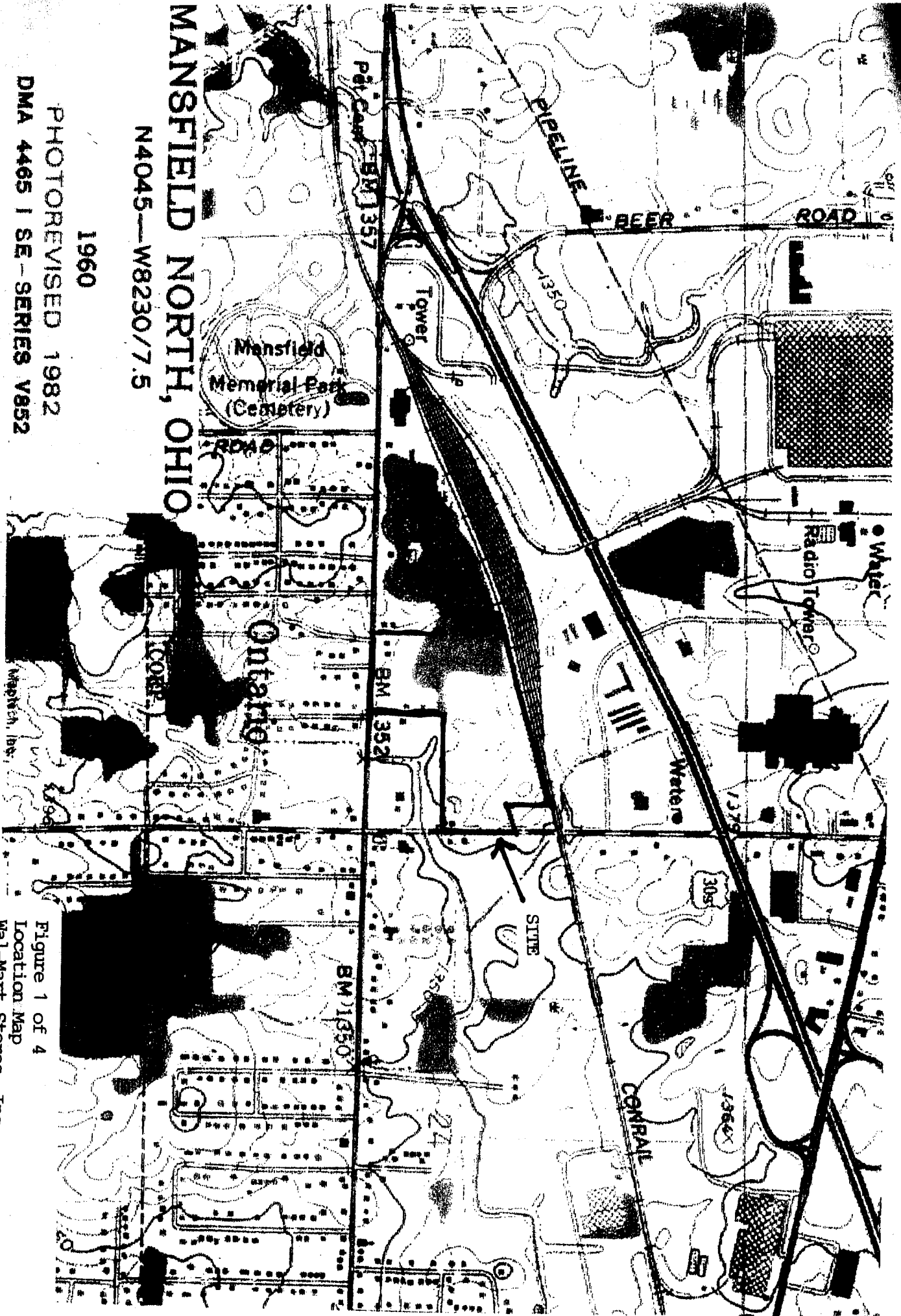
All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

If you have any questions concerning this public notice, please contact Desiree Hann at 304-399-5210.

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Ginger Mullins, Chief  
Regulatory Branch



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Figure 1 of 4  
Location Map  
Wal-Mart Stores, Inc.  
UNTrib Touby Run - 200300788  
Proposed Wal-Mart Construction Location

Wetlands Proposed  
to be Impacted

Location of Existing Store

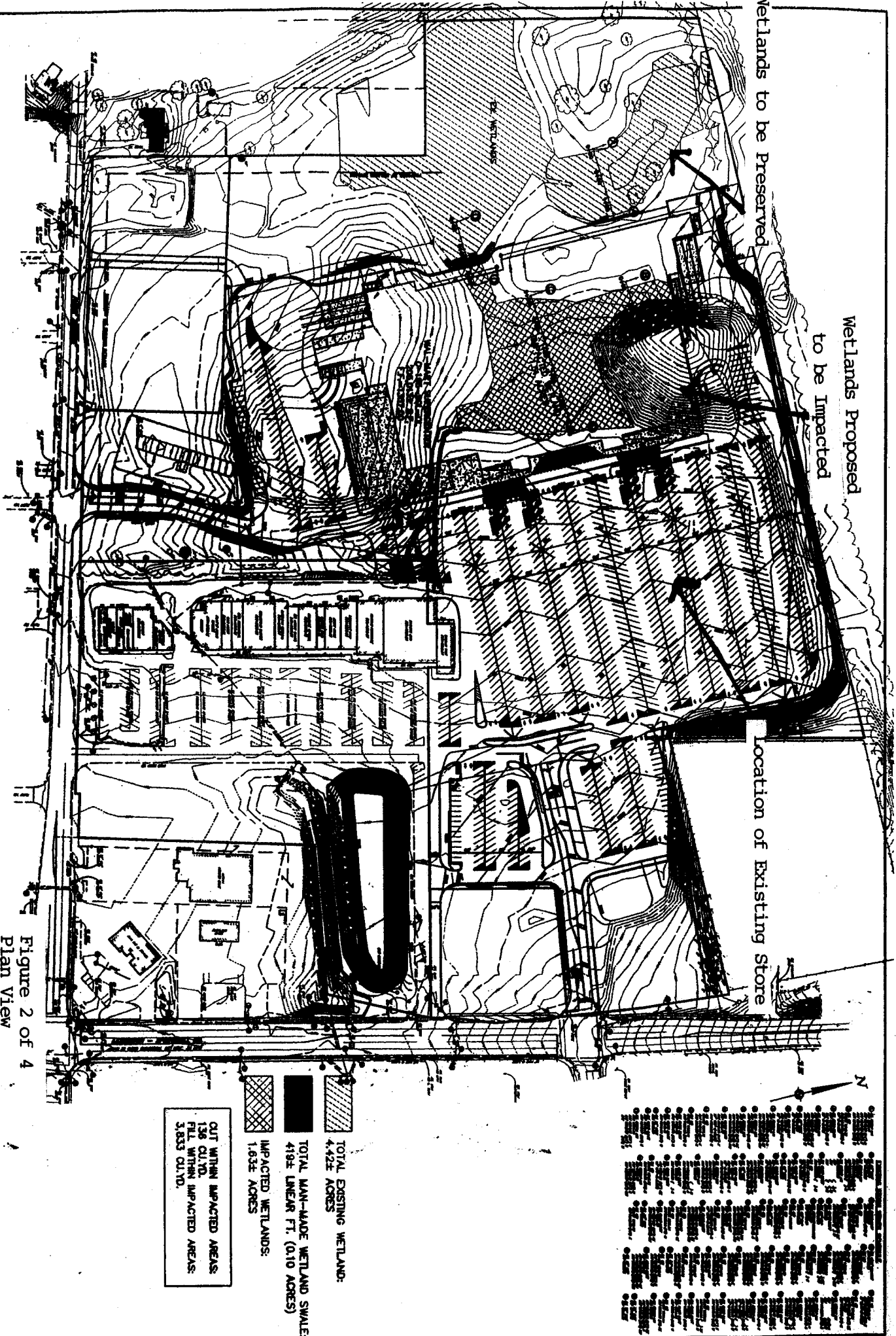


Figure 2 of 4  
Plan View  
Wal-Mart Stores, Inc.  
UNTRiB Touby Run - 200300788

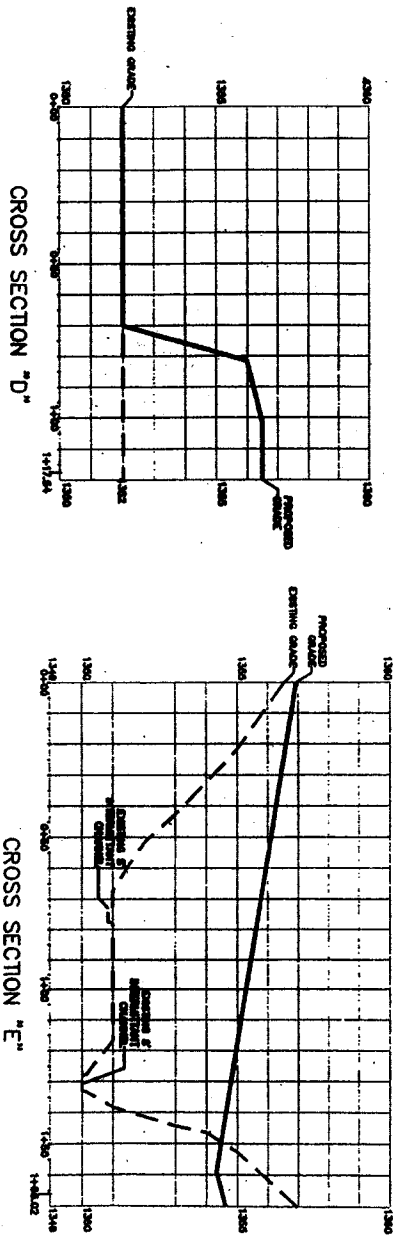
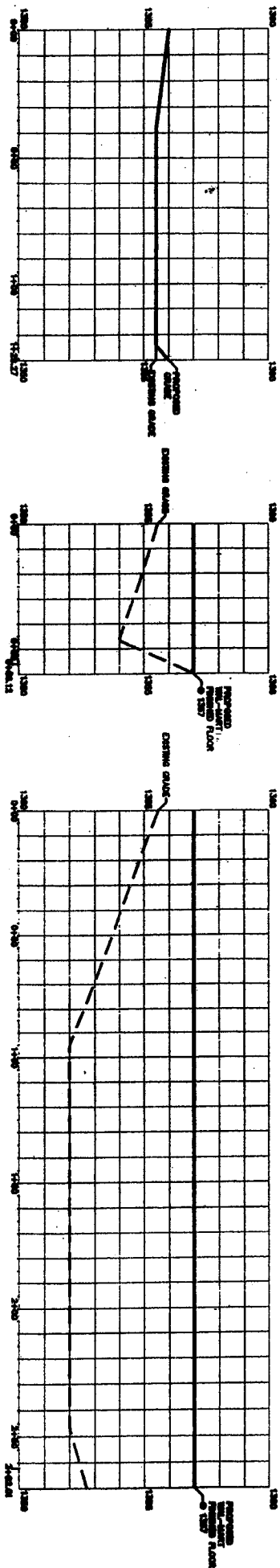


Figure 3 of 4  
 Cross-Section Views  
 Wal-Mart Stores, Inc.  
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Proposed Off-site Mitigation Location